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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,233	02/09/2004	Takahiro Nobukiyo	Y2238.0057	3193
32173 7590 06/09/2009 DICKSTEIN SHAPIRO LLP 1177 AVENUE OF THE AMERICAS (6TH AVENUE) NEW YORK, NY 10036-2714				
EXAMINER				
VO, NGUYEN THANH				
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2618				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,233

Applicant(s)

NOBUKIYO ET AL.

Examiner

NGUYEN VO

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-27, 32-51, 54-66 and 71-82 is/are pending in the application.
- 4a) Of the above claim(s) 5, 6, 9, 11, 12, 20-27, 36-51, 56, 57, 60, 62, 63 and 75-82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 4, 7, 10, 13, 16-19, 32-35, 54, 55, 58, 61, 64 and 71-74 is/are rejected.
- 7) ☒ Claim(s) 8, 14, 15, 59, 65 and 66 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-813)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/28/2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3, 18, 34, 54 and 73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 3, the recitation "the use rate" at line 8 lacks clear antecedent basis. In addition, the recitation "by presuming the use rate of the resource by measurement of a time rate that is identical with the time rate of transmission of data on a shared channel" has no clear meaning.

As to claims 18, 34, 54 and 73, they are rejected for the same reasons as set forth in claim 3 above.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 3, 18, 34, 54 and 73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding independent claims 3, 18, 34, 54 and 73, the original specification fails to support the newly-added limitation that the resource management is performed by presuming the use rate of the resource by measurement of a time rate that is identical with the time rate of transmission of data on a shared channel.

6. Claims 32-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 32-34 are nothing but a single-means claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
9. Claims 3, 18, 34, 54, 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 2003/0189915).

As to claims 3, 54, Miller discloses a mobile communication system for performing a high speed data transfer path for a mobile station and performing resource management on the high speed data transfer path (see paragraph [0011]), the mobile communication system comprising means which measures a time rate at which data is sent on the data transfer path (see paragraphs [0035], [0036], [0041]); and means which performs the resource management on the basis of a result of the measurement (see paragraphs [0035], [0036], [0041]). Miller fails to disclose that the resource management is performed by presuming the use rate of the resource by measurement of a time rate that is identical with the time rate of transmission of data on a shared channel. Those skilled in the art, however, would have recognized that a use rate of a channel is proportional to a time rate of that channel. The more time a channel is used, the more use rate of that channel. Therefore, it would have been obvious to one of

Art Unit: 2618

ordinary skill in the art at the time of the invention to provide the above teaching of modify Miller as claimed, in order to simply the measurement of the time rate of the channel.

As to claim 18, it is rejected for similar reasons as set forth in claim 3 above. In addition, Miller discloses a mobile communication system, comprising a base station (see node B in paragraphs [0035], [0041]); a mobile station for which a shared channel shared with other mobile stations is set in order to perform data transmission with said base station (see paragraph [0015]); and a radio network controller (see the CRNC in paragraphs [0035], [0041]) which notifies said base station of at least resource allocation information of said shared channel (see paragraph [0041]), wherein means, which measures a time rate at which data is sent on said shared channel, is included in said base station (see paragraphs [0035], [0041]).

As to claims 34, 73, they are rejected for similar reasons as set forth in claim 18 above.

10. Claims 4, 7, 10, 13, 16-17, 32-33, 55, 58, 61, 64, 71-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art admitted by applicant on pages 1-7 of the present specification (hereinafter simply referred to as the admitted prior art) in view of He (US 6,330,429).

As to claims 4, 55, the admitted prior art discloses a mobile communication system for performing a resource management including transmission power control to form a high speed data transfer path for a mobile station (see the present specification, page 2 lines 4-11; page 4 line 26 to page 5 line 7), the mobile communication system

Art Unit: 2618

comprising means which measures a state of use of the transmission power (see the present specification, page 4 line 26 to page 5 line 7; in this case, measuring an average value of transmission power as stated on page 5 lines 3-7 reads on "measures a state of use of transmission power" as claimed); and means which performs the resource management on the basis of a result of the measurement (see the present specification, page 2 lines 4-11; page 4 line 1 to page 5 line 7). The admitted prior art does disclose calculating an amount of use of the transmission power on the basis of a data transfer time to the data transfer path, and performing the resource management on the basis of the average value as claimed (see the present specification, page 4 line 1 to page 5 line 7). The admitted prior art fails to disclose the mobile communication system comprising means which measures a state of use of the codes; and means which performs the resource management on the basis of a result of the measurement. The admitted prior art, however, admits that it is conceivable to calculate an average number of use of codes and inform the calculated value from the base station to the RNC so that the RNC performs the resource management on the basis of a result of the measurement (see page 6 lines 1-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the conventional resource allocation control with means which measures a state of use of the codes, and means which performs the resource management on the basis of a result of the measurement (as suggested by the admitted prior art), in order to optimize the resource allocation in the communication system.

Still as to claim 4, the admitted prior art fails to disclose measuring number of use of codes during the data transfer time as claimed. He discloses measuring signal parameter values indicating of wireless system performance during data transmission time (see "real time" at column 8 lines 22-47; see also column 3 lines 21-27, line 37-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of He to the admitted prior art, in order to accurately measuring signal parameter values indicating of wireless system performance.

As to claims 7, 58, see the admitted prior art, page 6 lines 6-10.

As to claims 10, 61, see the admitted prior art, page 4 line 26 to page 5 line 7.

As to claims 13, 64, since the admitted prior art discloses calculating average transmission power (see the present specification, page 4 line 26 to page 5 line 7), the admitted prior art would inherently disclose calculating the data transfer time in a measurement period set in advance as claimed.

As to claim 16, the admitted prior art discloses a mobile communication system, comprising a base station (see the present specification, page 1 line 25); a mobile station for which a shared channel shared with other mobile stations is set in order to perform data transmission with said base station (see page 1 lines 12-23); and a radio network controller which notifies said base station of at least the number of allocated codes which is a maximum value of the number of codes of said shared channel (see page 3 lines 3-7). The admitted prior art fails to disclose a means, which measures an average number of use of the codes in a data transmission time on said shared

Art Unit: 2618

channel, is included in said base station. The admitted prior art, however, admits that it is conceivable to calculate an average number of use of codes (performed in the base station) and inform the calculated value from the base station to the RNC so that the RNC performs the resource management on the basis of a result of the measurement (see page 6 lines 1-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the conventional resource allocation control with means which measures a state of use of the codes, and means which performs the resource management on the basis of a result of the measurement (as suggested by the admitted prior art), in order to optimize the resource allocation in the communication system.

Still as to claim 16, the admitted prior art fails to disclose measuring number of use of codes during the data transfer time as claimed. He discloses measuring signal parameter values indicating of wireless system performance during data transmission time (see "real time" at column 8 lines 22-47; see also column 3 lines 21-27, line 37-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of He to the admitted prior art, in order to accurately measuring signal parameter values indicating of wireless system performance.

As to claims 32, 71, they are rejected for similar reasons as set forth in claim 16 above.

As to claim 17, the admitted prior art discloses a mobile communication system, comprising a base station (see the present specification, page 1 lines 24-25); a mobile

station for which a shared channel shared with other mobile stations is set in order to perform data transmission with said base station (see page 1 lines 12-23); and a radio network controller (see page 1 lines 1-2) which notifies said base station of at least allocated power which is a maximum value of power of said shared channel (see page 3 lines 5-7), wherein means, which measures an average amount of use of the power in a data transmission time on said shared channel, is included in said base station (see page 4 line 26 to page 5 line 7). The admitted prior art fails to disclose measuring power during the data transmission time as claimed. He discloses measuring signal parameter values indicating of wireless system performance during data transmission time (see "real time" at column 8 lines 22-47; see also column 3 lines 21-27, line 37-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of He to the admitted prior art, in order to accurately measuring signal parameter values indicating of wireless system performance.

As to claims 33, 72, they are rejected for similar reasons as set forth in claim 17 above.

11. Claims 19, 35, 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Miller and He (US 6,330,429).

As to claim 19, the admitted prior art discloses a communication system comprising a base station (see the present specification, page 1 lines 24-25); a mobile station for which a shared channel shared with other mobile stations is set in order to perform data transmission with said base station (see page 1 lines 12-23); and a radio

network controller which notifies said base station of the number of allocated codes which is a maximum value of the number of codes of said shared channel and allocated power which is a maximum value of power of said shared channel (see page 3 lines 3-7), wherein, means, which measures an average amount of use of the power in a data transmission time on said shared channel, is included in said base station (see page 4 line 26 to page 5 line 7). The admitted prior art fails to disclose means, which measures an average number of use of the codes in a data transmission time on said shared channel, is included in said base station as claimed. The admitted prior art, however, admits that it is conceivable to calculate an average number of use of codes (performed in the base station) and inform the calculated value from the base station to the RNC so that the RNC performs the resource management on the basis of a result of the measurement (see page 6 lines 1-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the conventional resource allocation control with means which measures a state of use of the codes, and means which performs the resource management on the basis of a result of the measurement (as suggested by the admitted prior art), in order to optimize the resource allocation in the communication system.

Still as to claim 19, the admitted prior art fails to disclose means, which measures a time rate at which data is sent on said shared channel, is included in said base station as claimed. Miller discloses means, which measures a time rate at which data is sent on said shared channel, is included in a base station (see paragraphs [0035], [0041]). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

invention to provide the above teaching of Miller to the admitted prior art, in order to optimize the resource allocation in the communication system (as suggested by Miller at paragraph [0041]).

Still as to claim 19, the admitted prior art as modified by Miller fails to disclose measuring number of use of codes and the use of the power during the data transmission time as claimed. He discloses measuring signal parameter values indicating of wireless system performance during data transmission time (see "real time" at column 8 lines 22-47; see also column 3 lines 21-27, line 37-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of He to the admitted prior art, in order to accurately measuring signal parameter values indicating of wireless system performance.

As to claims 35, 74, they are rejected for similar reasons as set forth in claim 19 above.

Allowable Subject Matter

12. Claims 8, 14-15, 59, 65-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

13. Applicant's arguments with respect to claims 3-4, 7-8, 10, 13-19, 32-35, 54-55, 58-59, 61, 64-66, 71-74 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGUYEN VO whose telephone number is (571)272-7901. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nguyen Vo/
Primary Examiner, Art Unit 2618